

DECISION

12390 *Feldman*
Proc II
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Untimely Protest Concerning Awardee's Qualifications]

FILE: B-195189

DATE: December 27, 1979

MATTER OF: Loud Engineering and
Manufacturing, Inc.

D 3532

DIGEST:

1. Oral denial of verbal protest constitutes initial adverse agency action within the meaning of GAO Bid Protest Procedures. Therefore, protest filed at GAO more than 10 days after agency orally denies protest is untimely filed and not for consideration on merits.
2. Protest issue which essentially concerns awardee's qualifications to manufacture part being procured is not significant issue within meaning of GAO Bid Protest Procedures. Therefore, GAO will not consider untimely protest raising that issue.

1 Loud Engineering and Manufacturing, Inc. (Loud)
2 protests the award of a contract to Smith and Smith
Aircraft Company (Smith) for jet aircraft speed brake
3 cylinders under request for proposals (RFP) F42600-79-
R-4495, issued by Hill Air Force Base, Utah. Essentially, 312
Loud contends that the Air Force should not consider
Smith qualified to supply the item. For the following
reasons, we dismiss Loud's protest as untimely filed.

By Loud's own admission, the firm was informed on March 16, 1979 of the award to Smith and on the same date orally protested and requested a meeting with the Air Force to discuss the matter. On March 19, Loud met with the Air Force "for the purpose of determining the validity of Smith's qualification." The Air Force reports that at this meeting Loud "felt a protest was appropriate" due to its continued objections to the qualification

~~008156~~ 111165

test procedures of Menasco, the licensor of Smith. At this meeting the Air Force also stated its position that Smith was acceptable because it was a licensed vendor of a qualified source, but requested that in response to Loud's "suggestion of a possible protest," Loud instead submit a letter of inquiry outlining its objections to Smith's qualifications. According to the Air Force, Loud stated it would look into the matter and would then submit a letter of protest if deemed necessary. Loud, however, claims that the Air Force recommended against a written protest until it had time to review Loud's allegations. It states that the Air Force was to advise Loud of its findings.

According to Loud, the contract administrator orally denied its protest on April 13 and Loud then submitted a formal written protest to the Air Force on the same date. Loud protested to this Office within 10 working days after the Air Force denied Loud's written protest.

Our Bid Protest Procedures encourage protesters to seek resolution of their complaints initially with the contracting agency. 4 C.F.R. § 20.2(a) (1979). Although the Air Force did not consider Loud's statements at the March 19 meeting to be an oral protest, it appears from Loud's own submission that it orally protested previously to the contract administrator and that this individual orally denied Loud's protest on April 13, 1979. Our procedures require that if a protest initially is directed to the contracting agency, any subsequent protest to the General Accounting Office must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 20.2(a). An agency's oral rejection of a verbal protest constitutes initial adverse action from which a protester must file a protest with GAO, rather than with the agency, to be timely under our Bid Protest Procedures. Technical Services Corporation, et al., B-190945, B-190970, B-190992, August 25, 1978, 78-2 CPD 145; Brandon Applied Systems, Inc., B-188738, December 21, 1977, 77-2 CPD 486. Although a protester may continue to pursue the matter with the agency, this does not affect the 10-day requirement for

a timely filing with our Office. Technical Services Corporation, supra; Southern Packaging and Storage Co., Inc., B-181249, July 15, 1974, 74-2 CPD 28. Under these facts, therefore, since Loud's oral protest was denied on April 13, its protest filed with our Office on June 18 is untimely and not for consideration on the merits. Graphic Litho Corporation, B-190928, January 9, 1978, 78-1 CPD 18.

Finally, Loud requests that if we find its protest untimely we should consider it under section 20.2(c) of our Bid Protest Procedures because it raises issues significant to procurement practices and procedures. Significant issues are those which involve a procurement principle of widespread interest, 52 Comp. Gen. 20 (1972), or which affect a broad class of procurements. Singer Company, 56 Comp. Gen. 172 (1976), 76-2 CPD 481. We do not consider the question of Smith's qualifications to manufacture the part being procured as a significant issue within the meaning of 20.2(c) of our procedures.

The protest is dismissed.



Milton J. Secolar
General Counsel